

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Nate Mullen

Serial No. 09/738,024

Filed: December 14, 2000

For: METHOD OF WIRING LIGHTING
FIXTURES TO ACHIEVE UNIFORM
VOLTAGE DROP

Group Art Unit: 3729

Examiner: Rick Kiltae Chang

Docket No. UNIQUE-47354

APPELLANT'S BRIEF
(37 CFR §1.192)

Commissioner for Patents
Via E-File

Gentlemen:

This brief is in furtherance of the Notice of Appeal, filed in this case on May 3, 2004 and the Notice of Non-compliant Appeal Brief mailed on January 29, 2008. The fees required under §1.17 for filing this brief were previously submitted.

I. REAL PARTY INTEREST

The real party in interest in the above-identified matter is Nate Mullen, the inventor.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, judicial proceedings or interferences known to the appellant which may be related to, directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-17 are pending in the application, of which claims 12-17 have been withdrawn.

Claims 1-11 have been rejected and are on appeal.

There are no claims which have been objected to or allowed.

IV. STATUS OF AMENDMENTS

An amendment was filed on August 17, 2004. Pursuant to an advisory action mailed on September 7, 2004, the amendment will be entered. The Amendment did not change the claims.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to an improved wiring method used for equalizing voltage delivered to each fixture in a lighting system. (Specification, page 5, lines 2-7).

According to independent claim 1, the method comprises providing an electrical source. (Specification, page 6, lines 1-2). The electrical source is then connected to an Equalizer Hub™. (Specification, page 6, lines 2-3). The equalizer hub is then connected to one or more light fixtures. (Specification, page 6, lines 9-14).

According to independent claim 8, the method comprises providing an electrical source and connecting the electrical source to a transformer. (Specification, page 6, lines 1-2). The transformer is then connected to two or more connectors in an Equalizer Hub™. (Specification, page 6, lines 2-5). The connectors are in turn connected to each of one or more lead wires, the lead wires being connected to one or more light fixtures. (Specification, page 6, lines 9-14).

According to independent claim 11, the method comprises providing an electrical source and connecting the electrical source to a transformer. (Specification, page 6, lines 1-2). The transformer is connected to a homerun wire, and the homerun wire is connected to two or more connectors in an Equalizer Hub™. (Specification, page 6, lines 2-5). The connectors are in turn connected to each of one or more lead wires, said lead wires being connected to one or more light fixtures. (Specification, page 6, lines 9-14). The lead wires are all of uniform length to place each light fixture an equal electrical distance from the transformer. (Specification, page 6, lines 15-24).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-11 are patentable under 35 U.S.C. § 102(b) over Hunte (US 4,937,499) ("Hunte '499"). More specifically whether Hunte '499 includes uniform length lead wires, an equalizer hub, and Applicant's claimed wiring configuration.

VII. ARGUMENT

1. The Examiner's Final Rejection is Inappropriate Because the Grounds for Rejection are Unclear and Incomplete.

Upon making a final rejection, the examiner must carefully consider the record and clearly develop and reiterate the grounds for rejection so that the Appellant is able to evaluate the advisability of an appeal. MPEP § 706.07. The Examiner may only incorporate previous Office Action statements by reference where they have been set forth in complete detail and even so, the Examiner should include a rebuttal of any arguments raised in the Appellant's reply. *Id.*

After the First Office Action required an election of species, the Second Office Action rejected Appellant's elected claims 1-11 under 35 U.S.C. 102(b) as anticipated by Hunte '499 stating only the following basis for rejection:

"Hunte discloses an electrical source (left hand side of 156 in Fig. 5), an equalizer hub (right hand side of 156 in Fig. 5)' light fixtures (150a...150c) are of uniform length, a transformer (156), and Fig. 5 shows all the wiring configuration as disclosed in the claimed limitations."

(See Office Action ¶ 6, dated May 15, 2003)

In response, Appellant traversed the rejection arguing that Hunte '499 failed to disclose the elements of an equalizer hub, light fixtures having lead wires of uniform length and the wiring configuration disclosed in Appellant's claimed limitations. In addition to submitting arguments, Appellant provided documentary evidence regarding full bridge rectifiers supporting its position that the right hand side (156) of Fig. 5 of

Hunte '499 does not disclose Appellant's claimed equalizer hub, but rather a full bridge rectifier. The following Office Action was a Final Rejection wherein the Detailed Action merely repeated word for word the above-referenced grounds for rejection made in the May 15, 2003 Office Action without any response to Appellant's arguments other than that they had been considered but were not persuasive. (See Office Action dated January 30, 2004)

Appellant attempted to seek clarification of the grounds for rejection by submitting a request for an Interview After Final Rejection along with an Interview Agenda. Appellant's request for an interview was denied with citation to a portion of Hunte '499 not relied upon in the previous Office Actions a statement that this new citation would "reasonably teach one of ordinary skill in the art the limitation 'light fixtures [having] uniform length.' " and citing *In re Wright*, 569 F.2d 1124 (CCPA 1977). This statement appears to admit that Hunte '499 does not disclose each element of the claimed invention and multiple teachings are being combined to arrive at the rejection.

It is well settled that a prior art reference may "reasonably teach to one of ordinary skill in the art" Appellant's invention, however, unless the Examiner establishes the prior art also discloses each element of Appellant's invention, anticipation under 35 U.S.C. § 102(b) is not established. It now appears that Appellant's invention is being rejected as obvious under 35 U.S.C. § 103. If that is the case, the Office Action must clearly state this as a basis for rejection and allow the Appellant an opportunity to respond to that rejection. Appellant is now uncertain as to whether it is Appealing a Final Rejection based solely upon anticipation under 35 U.S.C. § 102(b) as recited in

the Final Office Action or a newly raised grounds for rejection based on obviousness which was not asserted until an informal phone conversation several months after the Final Office Action was issued. Since the Examiner has failed to clearly develop the basis for rejecting the application, Appellant has not been given a full and fair opportunity to prosecute its application. Accordingly, the Final rejection is inappropriate and Appellant should be given a reasonable opportunity to respond to the Examiner's newly raised grounds for rejection.

2. The 35 USC 102(b) Rejection Is Improperly Based upon What the Hunte '499 Specification Would "Reasonably Teach One of Ordinary Skill in the Art".

As previously discussed, in response to the Appellant's interview Agenda, a formal interview was rejected and the following comments provided in an Interview Summary:

"In combination of Figs. 4-5 and col. 5, lines 15-23 would reasonably teach one of ordinary skill in the art the limitation 'light fixtures [having] uniform length' presented in the interview agenda dated 3/29/2004."

The Interview Summary cites to *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977), in support of its determination. In *In re Wright*, the court stated that a comparison of dimensions between an applicant's drawings and prior art drawings (wherein the prior art made no reference that the drawings were to scale) was of little value. *In re Wright*, 569 F.2d at 1127. The court however found that because the prior art taught that an outcome is influenced by a certain distance, a person having ordinary skill in the art would have realized a desirability for an increased distance. *Id.* at 1127-

28. Such case is distinguishable from the instant one.

Hunte '499 does not discuss any lengths or distances, nor does it provide any quantitative values or state that its drawings are to scale. Hunte '499 does not even disclose that any distances influence a certain outcome. Absent such statements, arguments based on proportions in the drawings are of little value. Appellant respectfully submits that the rejection at issue in *In re Wright* was one of obviousness under 35 U.S.C. § 103, and it was therefore appropriate for the court to consider what the prior art specification and drawings teach or suggest to one of ordinary skill in the art. *Id.* at 1126.

In contrast, in the instant application, the ground for rejection is based on anticipatory prior art under 35 U.S.C. § 102(b). Accordingly, in order to establish anticipation, each and every element of Appellant's invention must be found in the prior art in order for the prior art reference to serve as a basis for rejection. Hunte '499 does not discuss equal length lead wires, an equalizer hub, or the claimed wiring configuration.

Even assuming *in arguendo* that reliance on the language in Column 5, lines 15-23 of Hunte '499 in rejecting the application under 35 U.S.C. § 102(b) is appropriate, Appellant respectfully submits Column 5, lines 15-23 neither recites nor suggests Appellant's claimed limitation of "wire leads being of uniform length." Instead, Column 5, lines 15-23 of Hunte '499 recites the following:

The reflector 148 has an outer concave reflective surface 148a and three centrally located apertures, one shown at 148b, through which extend

three incandescent light bulbs 150. The light bulbs are in turn releasably held in fixtures 151 mounted on a main circuit board 152. The circuit board 152 contains switching circuitry, and a light sensor 156 which is mounted on a sub-circuit board 154 adjacent to the main circuit board 152 and through an aperture 112g in housing 112.

Column 5, lines 15-23 of Hunte '499 does not make any reference to the wires associated with the light fixtures 150a...150c, much less a desirable length for the wires. Appellant fails to see how this excerpt of the Hunte '499 specification teaches the limitation found in Claim 11 of the Application of "wire leads being of uniform length". The cited law has been misapplied in this case and *In re Wright* was incorrectly relied upon in support of the rejection under 35 USC § 102(b). Accordingly, the rejection should be withdrawn.

3. Hunte '499 Does Not Disclose or Suggest All the Claimed Limitations.

Anticipation under 35 USC § 102(b) is only appropriate "if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Appellant respectfully submits Hunte '499 does not disclose Appellant's claimed invention, specifically, uniform length lead wires, an equalizer hub, and the wiring

configuration. Therefore the final rejection under 35 USC § 102(b) should be withdrawn.

a. Claim Limitation of Uniform Length Lead Wires is not Found in Hunte '499.

Appellant respectfully submits that Hunte '499 fails to disclose Appellant's claimed limitation of "wire leads being of uniform length" found in independent claim 11.

The Final Office Action cites to Hunte '499 elements 150a, 150b and 150c of Fig. 5 in support of the contention that Appellant's limitation of "uniform length light fixtures" is disclosed by Hunte '499. It is well established that portions of features in drawings are not evidence of actual proportions when the drawings are not to scale. *Hockerson-Halberstadt, Inc. v. Avia Group Intel.*, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000)("[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue"); MPEP § 2125. Furthermore, Fig. 5 from Hunte '499 is merely a schematic diagram and it is well known by persons having ordinary skill in the art that schematic diagrams are not drawn to scale. See Declaration of John Reeves submitted herewith. There is no suggestion in Hunte '499 that the elements in Fig. 5 are drawn to scale, to a specific dimension, or are uniform. Absent such statement, one cannot conclude that Hunte '499 shows or teaches uniform length lead wires.

Figure 5 of Hunte '499 does not provide a length restriction with respect to the light fixtures or any wires associated with the light fixtures. In contrast, "wire leads begin of uniform length" is explicitly claimed and an essential element in the present

application. Appellant specifically recites in Claim 11 "said wire leads connected to one or more light fixtures, and said wire leads being of uniform length." (emphasis added). In addition, Appellant's specification discloses that the wire leads (32) are of equal length such that each fixture (3) is an equal distance from the transformer (12). (Specification, page 6, line 15-16).

Hunte '499 does not refer to wire leads, much less the length of wire leads, nor do the claims or specification recite that the light bulbs (150) are to be located a uniform distance from the transformer (156). Accordingly, Appellant's claimed limitation of "wire leads being of uniform length" is neither expressly nor inherently found in Hunte '499. Therefore, anticipation of under 35 USC § 102(b) has not been established.

b. Appellant's Claimed Limitation of an Equalizer Hub is not Found in Hunte '499.

The Examiner cites to the "right hand side of 156 in Fig. 5" in both the Second and Final Office Actions in support of his contention that Hunte '499 discloses an equalizer hub as claimed by Appellant. In response to the Second Office Action, which was the first time the Examiner raised this basis for rejection, Appellant presented arguments and evidence showing that element (158) found on the "right hand side of 156 in Fig. 5" is a full bridge rectifier not an electrical connection hub designed to allow multiple connections to a single home run wire as claimed and described in Appellant's invention. (See Response dated November 14, 2003). Furthermore, if the Examiner's reference was meant to be to everything in the schematic diagram between element (156) and the light bulbs (150a, 150b, and 150c) the diagram fails to depict connecting

one or more light fixtures separately to the home run wire coming from the transformer.

In reply to Appellant's arguments, the Examiner merely repeats the language from the Second Office Action in the Final Office Action and states Appellant's arguments were not persuasive without explanation. The Examiner even refused a request for an interview to clarify why Appellant's argument was not persuasive and/or the exact area to which the "right hand side of 156 in Fig. 5" refers.

Although the Examiner has not clarified which element found in Hunte '499 is an equalizer hub, Appellant argues before the Board that element (158) found to the right of (156) in Fig. 5 is not an equalizer hub and further that even the combination of the elements to the right of (156) in Fig. 5 of Hunte '499 do not depict Appellant's claimed equalizer hub (20). The equalizer hub claimed in the application provides a common connection point which facilitates the addition and/or removal of light fixtures without disrupting the uniformity in voltage to other light fixtures. Each light fixture (30) is directly coupled to a home run wire (14) without passing through another connection or fixture by running wire leads (32) from the fixtures (30) to connectors (22) found in the equalizer hub (20). (Specification, page 6, lines 9-15).

In contrast, the right side of Fig. 5 of Hunte '499 depicts a control circuit (154) which monitors the ambient light intensity by switching on the light fixtures 150a, 150b and 150c when the light intensity falls below a threshold level. (Specification, Col. 5, lines 57-60). In order to achieve this control, the signal traveling between the transformer (156) and the light fixtures (150a, 150b and 150c) in Fig. 5 passes through several points throughout the circuit before being received by the terminal conductors

for the light fixtures (150a, 150b and 150c). Specifically, power received through the step-down transformer (156) first passes through the full bridge rectifier (158) - the rectified signal is further smoothed by a capacitor (160) - the signal then passes through the circuit to a voltage divider and resistors, one of which (175) is ultimately "joined to a Darlington driver transistor (182) and a bias resistor (183). The collector of driver transistor (182) is coupled to a conductor (186) which forms the terminal conductors for the three incandescent lights 150a, 150b and 150c." (Specification, Col. 5, lines 25-50, 51-55). Certainly, the above disclosed elements to the right of (156) in Fig. 5 do not provide for a direct connection between the light fixtures (150a, 150b and 150c) and a common connection point which facilitates the addition and/or removal of light fixtures without disrupting the uniformity in voltage to other light fixtures. The control circuit (154) is not described as facilitating the addition and/or removal of the light fixtures without disrupting the uniformity in voltage to other light fixtures. Accordingly, the "right hand side of (156) in Fig. 5" is not the same element as Appellant's claimed equalizer hub.

c. Appellant's Claimed Wiring Configuration is not Found in Hunte '499.

As discussed above, the right side of Fig. 5 depicts each of the light fixtures (150a, 150b and 150c) sharing the same leads running from the power source and shows many electrical connections between the power source and the light fixtures (150a, 150b and 150c). In contrast to the multiple electrical connections between the power source and the light fixtures disclosed in Hunte '499, Appellant's invention teaches light fixtures directly coupled to the home run wire without intervening

connections. Even one such additional connection teaches away from the instant invention therefore Appellant's claimed wiring configuration is not disclosed by Hunte '499.

CONCLUSION

For the foregoing reasons, Applicant submits that claims 1-11 of the instant application are patentable over Hunte '499. Therefore, Appellant respectfully solicits the Board to reverse the decision of the Primary Examiner finally rejecting claims 1-11 and direct the Examiner to pass the application to issuance.

VIII. CLAIMS APPENDIX

I claim:

1. A method for wiring an electrical lighting system comprising:
providing an electrical source;
connecting said electrical source to an equalizer hub; and
connecting said equalizer hub to one or more light fixtures.
2. The method of claim 1 further comprising connecting said electrical source to a transformer and connecting said transformer to said equalizer hub.
3. The method of claim 2 further comprising connecting a homerun wire from said transformer to said equalizer hub.
4. The method of claim 1 further comprising connecting the equalizer hub to a wire lead on each of the one or more light fixtures.
5. The method of claim 4 wherein the wire leads on each of said light fixtures are of uniform length.
6. The method of claim 1 further comprising connecting said electrical source to two or more connectors contained in said equalizer hub.
7. The method of claim 6 further comprising connecting the connectors to said one or more light fixtures.
8. A method for wiring an electrical lighting system comprising:
providing an electrical source;
connecting said electrical source to a transformer;

connecting said transformer to two or more connectors contained in an equalizer hub; and

connecting said connectors to each of one or more wire leads, said wire leads connected to one or more light fixtures.

9. The method of claim 8 further comprising connecting a homerun wire from said transformer to said two or more connectors.

10. The method of claim 8 wherein the wire leads on each of said light fixtures are of uniform length.

11. A method for wiring an electrical lighting system comprising:
providing an electrical source;
connecting said electrical source to a transformer;
connecting said transformer to a homerun wire;
connecting said homerun wire to two or more connectors contained in an equalizer hub; and
connecting said connectors to each of one or more wire leads, said wire leads connected to one or more light fixtures, and said wire leads being of uniform length.

IX. EVIDENCE APPENDIX

Declaration of John Reeves (dated July 27, 2004), originally submitted with appeal brief filed on August 6, 2004.

X. RELATED PROCEEDINGS APPENDIX

None.

Respectfully submitted,

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MAD:xx

Enclosure: Declaration of John Reeves (7/27/04)

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